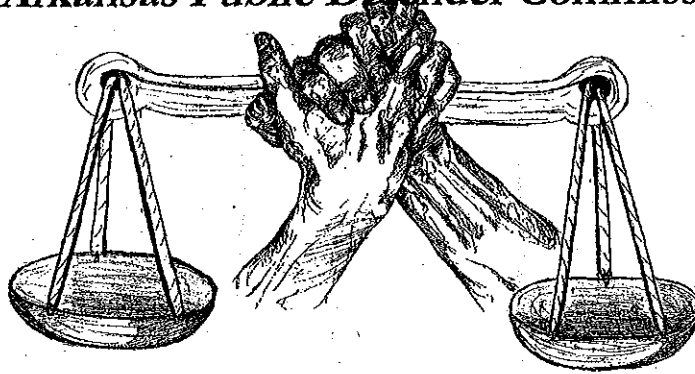


## *Arkansas Public Defender Commission*

**Executive Director**  
Didi H. Sallings

**Personnel Director**  
Denny Webster



**Defense Services Administrator**  
Jacque Alexander

**Network Services Administrator**  
Andy Gentry

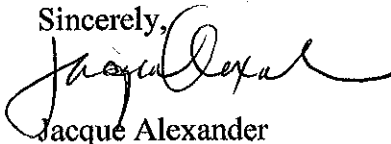
August 25, 2010

Ms. Donna Davis  
Administrative Rules Review Section  
Arkansas Legislative Council  
Bureau of Legislative Research  
Room 315, State Capitol  
Little Rock, AR 72201

Dear Ms. Davis:

Please find a Proposed Rule for the Arkansas Public Defender Commission. I believe I have included all required documents for compliance with the Administrative Procedures Act. If however, there is something else needed, please let me know. Thank you in advance for your assistance.

Sincerely,



Jacque Alexander

**QUESTIONNAIRE FOR FILING PROPOSED RULES AND REGULATIONS**  
**WITH THE ARKANSAS LEGISLATIVE COUNCIL AND JOINT INTERIM COMMITTEE**

DEPARTMENT/AGENCY Arkansas Public Defender Commission  
DIVISION \_\_\_\_\_  
DIVISION DIRECTOR Didi Sallings, Executive Director  
CONTACT PERSON Jacque Alexander  
ADDRESS 101 East Capitol, Suite 201, Little Rock, AR  
PHONE NO. 501-682-9070 FAX NO. 501-682-9023 E-MAIL jacque.alexander@arkansas.gov  
NAME OF PRESENTER AT COMMITTEE MEETING Didi Sallings  
PRESENTER E-MAIL didi.sallings@arkansas.gov

**INSTRUCTIONS**

- A. Please make copies of this form for future use.  
B. Please answer each question completely using layman terms. You may use additional sheets, if necessary.  
C. If you have a method of indexing your rules, please give the proposed citation after "Short Title of this Rule" below.  
D. Submit two (2) copies of this questionnaire and financial impact statement attached to the front of two (2) copies of the proposed rule and required documents. Mail or deliver to:

Donna K. Davis  
Administrative Rules Review Section  
Arkansas Legislative Council  
Bureau of Legislative Research  
Room 315, State Capitol  
Little Rock, AR 72201

\*\*\*\*\*

1. What is the short title of this rule? Funding Requests from Arkansas Public Defender Commission
2. What is the subject of the proposed rule? Procedure for requesting funding and assistance from Commission budget
3. Is this rule required to comply with a federal statute, rule, or regulation? Yes ☐ No ☒  
If yes, please provide the federal rule, regulation, and/or statute citation.
- 
4. Was this rule filed under the emergency provisions of the Administrative Procedure Act? Yes ☐ No ☒  
If yes, what is the effective date of the emergency rule? \_\_\_\_\_
- When does the emergency rule expire? na
- Will this emergency rule be promulgated under the permanent provisions of the Administrative Procedure Act? Yes ☐ No ☒

5. Is this a new rule?

Yes ☒

No ☐

If yes, please provide a brief summary explaining the regulation.

the regulation requires specific procedures and forms be used to make funding requests

Does this repeal an existing rule?

Yes ☐

No ☒

If yes, a copy of the repealed rule is to be included with your completed questionnaire. If it is being replaced with a new rule, please provide a summary of the rule giving an explanation of what the rule does.

Is this an amendment to an existing rule?

Yes ☐

No ☒

If yes, please attach a mark-up showing the changes in the existing rule and a summary of the substantive changes. **Note: The summary should explain what the amendment does, and the mark-up copy should be clearly labeled "mark-up."**

6. Cite the state law that grants the authority for this proposed rule?

If codified, please give Arkansas Code citation.

aCA 16-87-203 & 16-87-204

7. What is the purpose of this proposed rule? Why is it necessary?

To effectively, efficiently and equitably address requests for funding from the Public Defender Commission in a fiscally responsible manner

8. Please provide the address where this rule is publicly accessible in electronic form via the Internet as required by Arkansas Code § 25-19-108(b).

www.arkansas.gov/apdc/news/index.html

9. Will a public hearing be held on this proposed rule?

Yes ☐

No ☒

If yes, please complete the following:

Date: \_\_\_\_\_

Time: \_\_\_\_\_

Place: \_\_\_\_\_

10. When does the public comment period expire for permanent promulgation? (Must provide a date.)

September 29, 2010

11. What is the proposed effective date of this proposed rule? (Must provide a date.)

September 30, 2010

12. Do you expect this rule to be controversial?

Yes ☐

No ☒

If yes, please explain. \_\_\_\_\_

13. Please give the names of persons, groups, or organizations that you expect to comment on these rules? Please provide their position (for or against) if known.

## FINANCIAL IMPACT STATEMENT

**PLEASE ANSWER ALL QUESTIONS COMPLETELY**

**DEPARTMENT** Arkansas Public Defender Commission  
**DIVISION** \_\_\_\_\_  
**PERSON COMPLETING THIS STATEMENT** Jacque Alexander  
**TELEPHONE NO.** 501-682-9070 **FAX NO.** 501-682-9073 **EMAIL:** jacque.alexander@arkansas.gov

To comply with Act 1104 of 1995, please complete the following Financial Impact Statement and file two copies with the questionnaire and proposed rules.

**SHORT TITLE OF THIS RULE** Funding Requests from Arkansas Public Defender Commission

1. Does this proposed, amended, or repealed rule have a financial impact? Yes ☐ No ☒
2. Does this proposed, amended, or repealed rule affect small businesses? Yes ☐ No ☒  
If yes, please attach a copy of the economic impact statement required to be filed with the Arkansas Economic Development Commission under Arkansas Code § 25-15-301 et seq.

3. If you believe that the development of a financial impact statement is so speculative as to be cost prohibited, please explain.

4. If the purpose of this rule is to implement a federal rule or regulation, please give the incremental cost for implementing the rule. Please indicate if the cost provided is the cost of the program.

**Current Fiscal Year**

General Revenue \_\_\_\_\_  
Federal Funds \_\_\_\_\_  
Cash Funds \_\_\_\_\_  
Special Revenue \_\_\_\_\_  
Other (Identify) \_\_\_\_\_  
Total \_\_\_\_\_

**Next Fiscal Year**

General Revenue \_\_\_\_\_  
Federal Funds \_\_\_\_\_  
Cash Funds \_\_\_\_\_  
Special Revenue \_\_\_\_\_  
Other (Identify) \_\_\_\_\_  
Total \_\_\_\_\_

5. What is the total estimated cost by fiscal year to any party subject to the proposed, amended, or repealed rule? Identify the party subject to the proposed rule and explain how they are affected.

**Current Fiscal Year**

\$ 0

**Next Fiscal Year**

\$ 0

6. What is the total estimated cost by fiscal year to the agency to implement this rule? Is this the cost of the program or grant? Please explain.

**Current Fiscal Year**

\$ 0

**Next Fiscal Year**

\$ 0

**Summary of Proposed Rule**  
**Arkansas Public Defender Commission**  
**Rule regarding Funding Requests from Arkansas Public Defender Commission**

**This rule sets out a procedure that must be followed when retained counsel requests funding for professional services from the Commission. It also includes two forms required.**

## PROCEDURE FOR REQUESTING PAYMENT FOR SERVICES FOR INDIGENT DEFENDANTS UTILIZING RETAINED PRIVATE COUNSEL

The following procedure will be required for defendants who have hired private counsel and also seek financial assistance from the Arkansas Public Defender Commission:

1. The Court must make a finding that the client is indigent. This should be done as early as practical in the case to avoid unnecessary delay.
2. Following a finding of indigence, the attorney must complete 1) a certification application (if has not already done so), 2) the form outlining requested assistance and 3) the form outlining the fee arrangement.
3. Executive Director of the Arkansas Public Defender Commission will review and approve or approve with conditions such as relinquishment of a portion of the fee if it appears excessive or if the attorney is unqualified to handle such a case necessitating appointment of co-counsel.
4. If the request denied the attorney may appeal via documentation submitted to the full Commission. If the Commission upholds the denial then the case is heard before the trial judge for resolution.

Forms outline above are attached.

ARKANSAS PUBLIC DEFENDER COMMISSION

**RETAINED ATTORNEY FEE FORM**

All of the information contained in this form is confidential and shall be considered protected under attorney/client privilege. The Executive Director will release none of the information contained herein subject to an appeal to the full Commission.

Please complete the following information for consideration along with your request that the Arkansas Public Defender Commission fund expenses in your case. All information requested must be provided for consideration of payment for services. Should additional space be needed to complete a response, please use a separate page and append it to this document.

**ATTORNEY  
REQUESTING:**

Name: \_\_\_\_\_

(Please print clearly)

Bar No: \_\_\_\_\_

Address: \_\_\_\_\_

Phone: \_\_\_\_\_ Fax: \_\_\_\_\_

E-mail: \_\_\_\_\_

Certified: Y \_\_\_\_\_ N \_\_\_\_\_ What level? \_\_\_\_\_

DEFENDANT: \_\_\_\_\_

COUNTY: \_\_\_\_\_ CASE NO.: \_\_\_\_\_

CHARGE(S): \_\_\_\_\_

(Be sure to list all charges)

1. On what date were you retained or appointed? \_\_\_\_\_

2. The amount that was quoted to your client for:

A) Retainer: \_\_\_\_\_

B) Fee (flat or hourly) above a retainer: \_\_\_\_\_

C) Expenses: \_\_\_\_\_

3. The amount that has been paid to date and by whom:

\$ \_\_\_\_\_ By: \_\_\_\_\_

Relationship to Client: \_\_\_\_\_

4. The manner (i.e., U.S. currency, check, property, barter, etc.) in which you were paid and explain if not U.S. currency):

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5. The remaining amount due is \$ \_\_\_\_\_, and the expected manner (as defined above) of payment is:

Monthly amount: \$ \_\_\_\_\_

Other: \_\_\_\_\_

6. Does your fee include any liens on property - real or personal? \_\_\_\_\_ If so, describe:

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7. Does your fee include real or personal property ? \_\_\_\_\_ If so, describe: \_\_\_\_\_

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8. Does your fee include any assignments? \_\_\_\_\_ If so, describe: \_\_\_\_\_

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9. Does your fee include any future deals in books or movies, etc.? \_\_\_\_\_ If so, describe:

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Should you receive any additional fees, at any time, you are to notify the Arkansas Public Defender Commission immediately and provide a detailed accounting.

**PLEASE NOTE:** Rule 1.5 of the Arkansas Rules of Professional Conduct provides in part:

(a) A lawyer's fee shall be reasonable. A lawyer shall not make an agreement for, charge, or collect an unreasonable fee or an unreasonable amount for expenses. . . .

**PLEASE NOTE:** Rule 16 of the Arkansas Rules of Appellate Procedure - Criminal provides in part:

(a) Trial counsel, whether retained or court-appointed, shall continue to represent a convicted defendant throughout any appeal to the Arkansas Supreme Court or Arkansas Court of Appeals. . . .

It is mandatory that the Expenditure Request Form shall also be submitted at the same time that the Retained Attorney Fee Form is submitted for consideration.

**CERTIFICATION**

I certify that the above information is correct to the best of my knowledge.

\_\_\_\_\_  
Signature of Requesting Attorney

\_\_\_\_\_  
(Printed name)

Date: \_\_\_\_\_

STATE OF ARKANSAS     )  
  ) SS.  
COUNTY OF \_\_\_\_\_)

SUBSCRIBED and sworn to, before me, a Notary Public, this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
Notary Public

My Commission Expires:  
\_\_\_\_\_

\_\_\_\_\_  
Signature of Client

\_\_\_\_\_  
(Printed name)

Date: \_\_\_\_\_

STATE OF ARKANSAS     )  
                                      ) SS.  
COUNTY OF \_\_\_\_\_)

SUBSCRIBED and sworn to, before me, a Notary Public, this \_\_\_\_\_ day of  
\_\_\_\_\_, 20\_\_\_\_\_.

\_\_\_\_\_  
Notary Public

My Commission Expires:

\_\_\_\_\_

## ARKANSAS PUBLIC DEFENDER COMMISSION

### EXPENDITURE REQUEST FORM

All of the information contained in this form is confidential and shall be considered protected under attorney/client privilege. The Executive Director will release none of the information contained herein subject to an appeal to the full Commission.

Please supply the following information so the Arkansas Public Defender Commission ("APDC") can accurately assess the reasonableness of your request for funds from APDC. The Executive Director will have the discretion to determine what funds are reasonable for the crime(s) charged. All information requested must be provided for consideration of payment of services. Should additional space be needed to complete a response, please use a separate page and append it to this document.

**ATTORNEY  
REQUESTING:**

Name: \_\_\_\_\_

(Please print clearly)

Bar No: \_\_\_\_\_

Address: \_\_\_\_\_

Phone: \_\_\_\_\_ Fax: \_\_\_\_\_

E-mail: \_\_\_\_\_

Certified: Y \_\_\_\_\_ N \_\_\_\_\_ What level? \_\_\_\_\_

DEFENDANT: \_\_\_\_\_

COUNTY: \_\_\_\_\_ CASE NO.: \_\_\_\_\_

CHARGE(S): \_\_\_\_\_

(Be sure to list all charges)

### SECTION I

1. On what date were you retained or appointed? \_\_\_\_\_

2. A) What plea offers, if any, have you received from the State? \_\_\_\_\_

B) Have those plea offers been conveyed to the client and rejected? Y \_\_\_\_\_ N \_\_\_\_\_

3. List all pre-trial and trial dates: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_
4. List any/all co-defendants whether or not charged in the same Information: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_
5. Provide a brief synopsis of the case listing all relevant facts: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_
6. List possible or proposed defenses (need not to have been formally pled at this time):  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_
7. Describe the State's forensic evidence, if applicable. If the reports are available, attach copies.  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

- 
- 
- 
8. If there is an assertion of mental disease or defect, provide any reasons for pursuing this to include but not be limited to, for example: interaction with client; lack of ability to communicate, history of mental illness, commitment to mental institution, special ed, known head injury, etc., with any supporting documentation.
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- 

9. If you are seeking specific forensic testing, provide:

(A) What testing needs to be done? \_\_\_\_\_

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(B) Why is testing necessary? \_\_\_\_\_

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(C) Who is the proposed expert? \_\_\_\_\_ Provide a Curriculum Vitae.

(D) Cost estimate (including who was consulted and his/her hourly rate): \$ \_\_\_\_\_

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(E) Provide names and locations of other cases in which the expert has testified:

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- 
- (F) Has the Arkansas State Crime Lab or the Arkansas State Hospital or other agency done any testing? \_\_\_\_\_ If so, what?
- 
- 
- 

## **SECTION II**

The following requirements must also be satisfied to receive approval for payment of services:

1. The court has found the defendant indigent by order dated \_\_\_\_\_.

Attach a copy of the order.

2. The requesting attorney must be certified through the Arkansas Public Defender Commission's applicable certification process for the class of felony involved in the case in which funds are sought; or, be seeking immediate certification for the class of felony involved in the case in which funds are sought.

3. If retained, the requesting attorney must submit with this request documentation on his or her retention. Additionally:

- (A) The client must waive attorney/client privilege for the limited purpose of disclosure to the Commission of his/her fee agreement for retention and for examination of expert testing results.
- (B) The requesting attorney/defendant must pay a user fee pursuant to Ark. Code Ann. § 16-87-213 (D)(2) and Ark. Code Ann. § 5-4-303(g).

4. If the attorney fee is excessive for the type of case, the Commission reserves the right to require that a portion be paid or assigned to the Commission to assist in funding the request.

5. If the retained attorney's level of experience falls far short of the Arkansas Public Defender Commission's Minimum Standards for certification, then the Commission may require the attorney to relinquish a portion of the fee in order to assign a qualified co-counsel.

6. The Executive Director may request, and review, interim reports to assess whether additional testing is warranted.

It is mandatory that the Retained Attorney Fee Form shall also be submitted at the same time that the Expenditure Request Form is submitted for consideration.

The Executive Director will have a reasonable time to respond to a request. Denial of a request may be appealed to the Commission based upon written record.

#### **CERTIFICATION**

I certify that the above information is correct to the best of my knowledge.

\_\_\_\_\_  
Signature of Requesting Attorney

\_\_\_\_\_  
(Printed name)

Date: \_\_\_\_\_

STATE OF ARKANSAS     )  
                                      ) SS.  
COUNTY OF \_\_\_\_\_)

SUBSCRIBED and sworn to, before me, a Notary Public, this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
Notary Public

My Commission Expires:  
\_\_\_\_\_

## NOTICE OF RULE ADOPTION

Notice is hereby given that the Arkansas Public Defender Commission intends to adopt a Rule concerning Funding Requests from the Arkansas Public Defender Commission. The purpose of the Rule is to require a specific form, adopted by the Arkansas Public Defender Commission, to be used by parties requesting funding from the Commission budget. Written comments from the public will be accepted in advance of the adoption of the Rule if received before September 29, 2010. Written comments should be mailed to the Commission at 101 East Capitol, Suite 201, Little Rock, Arkansas 72201. A copy of the Proposed Rule and form may be obtained at the Commission Office and is available for public inspection.



